

Before The
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Revision of Part 22 of the)
Commission's rules governing)
the Public Mobile Services)

CC Docket No. 92-115

To: The Commission

REPLY COMMENTS OF TELOCATOR

Telocator, the Personal Communications Industry Association, hereby submits its reply comments on the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.¹ Over 35 parties filed opening comments generally supporting this significant effort by the agency to make its rules easier to understand, to eliminate outdated regulations and unnecessary information collection requirements, and to allow licensees greater flexibility in providing service to the public. Indeed, there is a broad consensus that adoption of many of the proposals will significantly benefit consumers, the industry and the FCC.

Nevertheless, the commentators overwhelmingly agree that certain proposals must be modified or clarified to realize the agency's objectives. Telocator therefore urges the Commission to implement the modifications which the association presented in its comments. Specifically, Telocator reiterates its concerns regarding six major policy issues, which have garnered broad support from other commentators: (1) the grant of applications on a first come, first served basis; (2) the issuance of conditional licenses; (3) the implementation of a finder's

¹ Revision of Part 22 of the Commission's rules governing the Public Mobile Services, 7 FCC Rcd. 3658 (1992) ("NPRM").

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preference; (4) the use of multichannel transmitters; (5) the treatment of minor/major modifications; and (6) the operation of UHF two-way channels. Each of these issues, as well as miscellaneous items of concern, are discussed below.

A. First Come, First Served Application Process

The commentors in this rulemaking almost uniformly recognize that the agency's proposal to grant applications on a "first come, first served" basis, unless modified, will impede the development of wide-area systems and will fail to achieve the FCC's goal to reduce controversies that delay the processing of applications.² For example, commentors appropriately fear that the proposal as written will increase incentives for speculation and abuse, force carriers to expend resources prematurely for regulatory rather than sound business reasons, create an avalanche of applications that would inundate the agency's processing staff, and embroil the agency in legal disputes that are now generally avoided through the use of lotteries. Accordingly, the commentors recommend that the Commission adopt modified procedures that will accommodate the legitimate interests of exiting licensees and their subscribers.

Telocator submits that the modifications recommended in its comments would better balance the competing interests of the FCC, the industry and subscribers. Telocator urged the Commission to adopt a "market area" licensing approach in the Paging and Radiotelephone

² See, e.g., Telocator at 5-9; Alltel at 2; BellSouth at 3-4 & Appendix 2, pp. 31-32; GTE at 4; McCaw at 15-16, 26-28; Metrocall at 7-9; NYNEX at 2-3; Peters at 2-4; PacTel Paging at 21-25; Radiofone at 2-16; SkyTel at 3-4; SBA at 7-12; SMR Systems at 8-10; SNET at 10-11; Southwestern Bell at 13-14; NewVector at 3-5 & Appendix 1, pp. 30-31.

services akin to that employed for cellular.³ Recognition of a licensee's "market area" (rather than the location of its existing transmitters), Telocator noted, would be a reasonable mechanism to achieve the Commission's goals to reduce the number of potential mutually exclusive applications and associated lotteries that delay the processing of applications and burden agency resources, but at the same time permit bona fide licensees an opportunity to enhance their wide-area systems to improve service to their subscribers. Telocator therefore urges the agency to modify its rules accordingly.⁴

B. Conditional Licensing

Many companies have expressed concern about the FCC's proposal to issue conditional licenses.⁵ Indeed, adoption of the proposal could seriously jeopardize service to subscribers, including public safety organizations, that have come to rely on the carrier. The proposal, if adopted, also would weaken the ability of licensees to obtain financing needed to continue their operations.

Consequently, Telocator urges the agency to modify its proposal in certain respects to address these concerns. First, the agency should clarify what type of review would be undertaken upon a complaint of interference as well as the type of interference that would result

³ Telocator at 8; see also PageNet at 5-10.

⁴ Alternatively, Telocator proposed that the agency allow existing licensees within 250 kilometers of the facilities proposed in a pending application an opportunity to file a mutually exclusive application and request a comparative hearing. Telocator at 9.

⁵ See, e.g., Telocator at 9-12; Bell Atlantic at 15-16; BellSouth at 4-5; CTIA at 4-5; Metrocall at 9-11, 29; Pacific Bell at 7; PacTel Paging at 25-28; PageNet at 37; Peters at 5-6, 19-21; SNET at 11-12; SBA at 16-18; Southwestern Bell at 14-15; NewVector at 5-6; but see NYNEX at 3.

in a license revocation. In this regard, the Commission should ensure that its evaluation relates only to co-channel interference resulting from engineering errors in the application and not adjacent channel interference, spurious emissions, intermodulation interference, or interference caused by improper operation.⁶ The Commission also should ensure that its decision to replace the Carey criteria with formulas will not affect the authorizations of existing licensees.

Second, the FCC should limit the conditional period to one year from commencement of service to provide subscribers needed assurances that they will continue to receive service and to provide licensees the ability to obtain needed financing for that purpose.⁷

Last, the agency should clarify the criteria to be used to determine whether a licensee has met the FCC's interference requirements.⁸ To that end, the FCC should define how service area boundaries are to be calculated. For example, it should consider the role of the basic eight cardinal radials, the role of special radials, and the role of additional offset radials. The need for such a clarification is particularly important to minimize the possibility of disputes under a conditional licensing regime.

C. Finder's Preference

Several commentators raise questions relating to the agency's tentative decision to adopt a finder's preference for Part 22 licensees.⁹ Although at least one commentator opposes the

⁶ See generally Telocator at 12.

⁷ See Telocator at 11; Southwestern Bell at 15; SNET at 11-12.

⁸ See Telocator at 40; PacTel Paging at 73; see also GTE at 22-23; Bell Atlantic at 15-16.

⁹ See, e.g., Telocator at 20-21; BellSouth at 5-6 & Appendix 2, pp. 24-25; Radiofone at 20-21; Peters at 6; Metrocall at 16-17; PageNet at 15-18; NewVector at 6-7; PacTel Paging at 15-16.

proposal,¹⁰ others -- including Telocator -- seek substantive and procedural changes to ensure the proposal can be reasonably implemented. In particular, the agency should provide guidance as to the sort of showings that will be considered sufficient to justify a finder's preference. It also should resolve issues raised by the commentors relating to (1) the monitoring that may be conducted;¹¹ (2) the definition of "commencement of service to the public;"¹² and (3) the date a channel is considered "terminated" and/or "available."¹³

Furthermore, many of the commentors concur that the agency should not implement a re-application ban when a licensee voluntarily terminates its authorization.¹⁴ Finders should not be granted a preference when a permit holder voluntarily surrenders the authorization.

D. Multichannel Transmitters

There is almost unanimous agreement that the agency's proposed prohibition on the use of multichannel transmitters will preclude legitimate business practices that significantly benefit subscribers.¹⁵ Indeed, the use of multichannel transmitters allows carriers to provide

¹⁰ Alltel at 2.

¹¹ See, e.g., Telocator at 20-21; PacTel Paging at 66.

¹² See, e.g., Telocator at 17; BellSouth at Appendix 2, p. 29-30; GTE at 8-9; Metrocall at 14; Pacific Bell at 5; PacTel Paging at 38-39; Page America at 1-3; PageNet at 18-21; Radiofone at 22-23; Southwestern Bell at 20-21.

¹³ See, e.g., Telocator at 15; PacTel Paging at 10-12.

¹⁴ See, e.g., Telocator at 15-17; Centel at 6-7; Pacific Bell at 3; PacTel Paging at 34-36; 64-65; Page America at 7-8; PageNet at 15, 34-35; SNET at 9; Southwestern Bell at 18 n.16; USTA at 3; NewVector, at 10-11.

¹⁵ See, e.g., Telocator at 34-38; BellSouth at 21-22 and Appendix 2, p. 30-31; McCaw at 29-32; Metrocall at 24-28; PacTel Paging at 28-34; Pac-West at 3-6; Page America at 7; PageNet at 21-25; Peters at 16-17,

(continued...)

additional and varied services, expand the geographic coverage of their systems, facilitate sharing among co-channel licensees and establish parity between Part 22 and Part 90 licensees.

Accordingly, Telocator urges the agency to delete its proposed prohibition on multichannel transmitters. The benefits of the proposal -- to prevent warehousing -- are outweighed by the significant subscriber benefits achieved through the use of multichannel transmitters. Warehousing can be better addressed through enforcement of other rules and measures more specifically designed to prevent such abuses.

E. Minor/Major Modifications

One of the most significant impediments to the timely implementation of service enhancements and innovation has been the delays inherent in the agency's current approval requirements for facilities that do not pose a substantial risk of interference. Telocator commends the agency for revising its rules to address this concern by reclassifying certain modifications and eliminating the need to file Form 489 under certain circumstances.

Nevertheless, Telocator reiterates the recommendations it made in its opening comments as well as those made by other commentators to further modify the paging, mobile telephone,¹⁶

¹⁵(...continued)

NewVector at Appendix 1, pp. 29-30; Southwestern Bell at 23-25; SkyTel at 2-3; SBA at 19-20; SMR Systems at 7-8, SNET at 2-6.

¹⁶ See, e.g., Telocator at 41-44, 46-47, 51-52; Alltel at 3; GTE at 17; BellSouth at 6-8; PacTel Paging at 36-37; Radiofone at 11-13; NewVector at Appendix 1, pp. 13-14; New Par at 8-11; but see USTA at 1-2.

and cellular¹⁷ rules to increase carrier flexibility to make minor changes to base¹⁸ and control¹⁹ stations.

Specifically, the agency should revise its rules to allow carriers to make the following additional modifications without prior approval:

- Modifications to 72-76 MHz control stations, provided there is no increase in the height of the center of radiation of the antenna above average terrain, no increase in effective radiated power, and no change in location of the transmitting antenna of more than two kilometers;
- Modifications to 150 and 454 MHz stations used for control, provided the reliable service area and interference contours (as if used for a base station) are not enlarged;
- Modifications to 928, 932, and 959 MHz control stations, provided there is no change in location of the transmitting antenna of more than two kilometers, and no decrease in required co-channel separation as required under Part 22 of the Commission's rules for such stations;
- Modifications to convert base stations to control use, provided the facilities are operated under the same technical specifications authorized to the station as a base;
- Modifications to relocate a 931 MHz base station 2 kilometers or less from the original coordinates and not closer to a co-channel licensee; and modifications to implement low power 931 MHz fill-in facilities;
- Modifications above Line A consistent with recent international agreements pertaining to 931 MHz facilities; and
- Modifications to cellular facilities within a five-mile buffer zone around the CGSA as long as no extensions are proposed into adjacent markets.

¹⁷ See e.g., Telocator at 51-52; Alltel at 3-4; BellSouth at Appendix 2, pp. 35-36; CTIA at 5, 7; Comp Comm at 36-38; McCaw at 15-16; New Par at 11, 19-21; Southwestern Bell at 19-20; NewVector at Appendix 1, pp. 15, 42-43.

¹⁸ See, e.g., Telocator at 43-44, 51-52; Comp Comm at 15-16, 20-21; Metrocall at 30; PageNet at 25-32; Peters at 17-19; SNET at 6-8, 10.

¹⁹ See, e.g., Telocator at 46-47; Metrocall at 32.

F. Use of UHF Two-Way Channels

Many of the commentors also concur in the agency's proposal to encourage spectrum efficiencies by promoting flexible use of two-way channels.²⁰ Spectrum is becoming increasingly scarce, particularly for control purposes, and the agency should adopt rules that will allow licensees to employ underutilized channels to fill this need.

Telocator offered certain technical recommendations to implement such approach, but recognizes that the Commission should develop more comprehensive criteria that will carefully and fairly balance the needs of all licensees.²¹ In this regard, Telocator opposes the recommendations of International Mobile Machines ("IMM") to limit the use of these channels for the benefit of Basic Exchange Telecommunications Radio Service ("BETRS").²² IMM's proposals go far beyond the scope of this rulemaking and would preclude the development of innovative services using the 450/454 MHz spectrum.

G. Miscellaneous

Many commentors, like Telocator, identified certain of the rule changes proposed by the agency which will unnecessarily increase burdens on licensees, thereby reducing their flexibility to offer service in the public interest. For example, commentors oppose proposals that would

²⁰ See, e.g., Telocator at 47-49; Comp Comm at 24-29; Metrocall at 33; SMR Systems at 13-14; NewVector at Appendix 1, p. 33.

²¹ Specifically, Telocator recommended that licensees be permitted to use mobile channels to control either paired or unpaired channels. It also suggested that the agency should recognize interference only if the victim receiver (1) is located within the reliable service area of its base station; and (2) is not higher than the nearest authorized base station. Telocator at 47-48.

²² See International Mobile Machines at 1-9; see also Peters at 24-27 (limiting power on mobile channels).

(1) impose additional microfiche requirements on licensees;²³ (2) establish rigid station identification requirements that reduce subscriber access to spectrum;²⁴ (3) create confusion and delay in the processing of applications by the Antenna Survey Branch;²⁵ (4) increase responsibility upon licensees to protect AM broadcast facilities from improper operation that Part 22 licensees do not cause;²⁶ and (5) preclude administratively beneficial call sign consolidations.²⁷

Moreover, Telocator and many other parties agree that the Commission's proposals fall short of achieving its objectives in several respects and, accordingly, urge the agency to make certain additional modifications. Specifically, the FCC should: (1) extend the amnesty provisions to allow carriers to correct their authorizations to match actual operations;²⁸ (2) eliminate unnecessary record-keeping, on-site control operator, and posting requirements;²⁹ (3) facilitate the renewal process by permitting carriers to file applications within one year of

²³ See, e.g., Telocator at 17-18; Bell Atlantic at 4-5; CTIA at 3-4; SBA at 13-15, SMR Systems at 2-3; Southwestern Bell at 22-23; USTA at 2; New Par at 3-5; Centel at 7; GTE at 11-12; Metrocall at 14-16, McCaw at 21-22.

²⁴ See, e.g., Telocator at 38-39; Metrocall at 28; PacTel Paging at 67-68.

²⁵ See, e.g., Telocator at 23-24; CTIA at 2-3; Comp Com at 39; GTE at 13-14; McCaw at 22; Metrocall at 18; PageNet at 33-34 (opposing requirements that would lead to confusion in the transition to NAD83); see also Telocator at 24-26; Metrocall at 16; GTE at 16-17; PacTel Paging at 56; PageNet at 38; but see Peters at 11-12; USTA at 2 (opposing antenna sketch requirements that are unnecessary and can be replaced with less burdensome, numerical information requirements).

²⁶ See Telocator at 30; Comm Eng. Services at 1-2; Hatfield at 1-3; New Par at 12-15; but see du Treil at 1-2.

²⁷ See Telocator at 31-32; Metrocall at 21-22; PacTel Paging at 70; but see Page America at 7.

²⁸ See Telocator at 13-14; PacTel Paging at 12-15.

²⁹ See Telocator at 27-28; GTE at 10; Metrocall at 20-21; PacTel Paging at 67, 69; PageNet at 40-41; Radiofone at 24.

expiration;³⁰ (4) conform its pre-grant construction (and FAA) rules to those in place for other services;³¹ and (5) provide for the submission and public notice of certain Form 489 filings to advise licensees of information needed to protect against interference.³²

Conclusion

Telocator applauds the agency's initiatives and urges it to adopt the proposals with the changes discussed in its opening comments and emphasized here on the reply. These changes will allow licensees to accommodate expected changes in the industry that will enhance the availability and functionality of mobile communications services to the benefit of consumers.

Respectfully submitted,

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³⁰ See Telocator at 21-22; PacTel Paging at 43-45; Metrocall at 17; but see NYNEX at 6-7.

³¹ See Telocator at 24-26; Metrocall at 19.

³² See Telocator at 29-30, 41-42; PacTel at 57-58; Southwestern Bell at 23; USTA at 3; Metrocall at 30.